IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4056 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEB - Petitioner(s)

Versus

HASMUKHBHAI DHULABHAI PANDOR - Respondent(s)

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Appearance :

MR MD PANDYA for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/08/2005

ORAL JUDGMENT

1.0 The petitioner Board has prayed to quash and set aside the award dated 25.02.1997 passed by the Labour

Court, Himmatnagar in Reference (LCH) No. 487 of 1996, whereby the petitioner was directed to reinstate the respondent on his original post with continuity of service and back wages from 14.05.1993.

2.0 The brief facts of the case are that the respondent herein was employed as a Helper by the petitioner Board since 1981. The services of the respondent were brought to an end w.e.f 30.08.1991. Against the said action, the respondent raised a dispute, which, ultimately culminated into a reference before the Labour Court, Himmatnagar. The Labour Court, by impugned award, allowed the reference with the aforesaid directions. Hence, this petition.

3.0 While entertaining the matter on 28.08.1997, this Court had stayed the operation of the impugned award qua back wages only pursuant to which the respondent workman was reinstated in service. Mr. M D Pandya learned advocate for the petitioner Board has produced order dated 02.09.1999 on record by which the services of the respondent were terminated pursuant to inquiry held against him. A criminal complaint was also lodged against the respondent herein. In above view of the matter, the

order of reinstatement passed by the Labour Court has now been substituted by the order of dismissal dated 02.09.1999 passed by the petitioner Board. Hence, the only question which is required to be considered by this Court is with regard to grant of back wages.

4.0 In the impugned award, the Labour Court has not given any cogent reasons while awarding back wages to the respondent. An order for payment of back wages cannot be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. In the present case, the Labour Court has awarded back wages while granting the benefit of doubt to the respondent.

4.1 Moreover, in view of the principle laid down by the Apex Court in the case of ***Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176*** and in the case of ***General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137 [2005 (5) S.C.C. pg.591]***, the respondent herein cannot be said to be entitled for back wages. Hence, the impugned award qua granting the respondent back wages is required to be quashed and set aside.

5.0 In the result, this petition is allowed. The impugned award of the Labour Court qua granting the respondent reinstatement with continuity in service is quashed and set aside in view of the fact that dismissal order has been passed against the respondent; and, the award qua granting back wages is quashed and set aside. However, it is clarified that if the order of dismissal passed by the petitioner Board has been challenged by the respondent herein by way of any proceedings, the Labour Court is directed to decide the same independently, without being influenced by the fact that this Court has allowed the petition of the petitioner Board. Rule is made absolute accordingly with no order as to costs.

(K. S. JHAVERI, J.)

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